

DO

FR-4915-01-P

SURFACE TRANSPORTATION BOARD

[Docket No. FD 36125]

Kean Burenga—Continuance in Control Exemption—Dover and Rockaway River Railroad, LLC, Belvidere & Delaware River Railway Company, Inc., and Black River & Western Corp.

Kean Burenga, a noncarrier (Burenga), has filed a verified notice of exemption pursuant to 49 C.F.R. § 1180.2(d)(2) to continue in control of Dover and Rockaway River Railroad, LLC (DRRR), upon DRRR's becoming a Class III rail carrier. According to Burenga, he currently controls a class III rail carrier, Belvidere & Delaware River Railway Company, Inc. (BVDR), and possibly a second class III rail carrier, Black River & Western Corp. (BRWC). Burenga states that he is a minority shareholder of DRRR and BRWC and that he is filing this verified notice in an abundance of caution to exempt his control of DRRR were the Board to determine that he controls DRRR and, if the Board were to determine he controls BRWC, that entity too.¹

This transaction is related to a concurrently filed verified notice of exemption in Docket No. FD 36124, Dover & Rockaway River Railroad—Operation Exemption—County of Morris, N.J. In that proceeding, DRRR seeks an exemption

¹ The Board's exemption authority is permissive, and this notice does not constitute a ruling that Burenga controls, or needs authority to control, either BRWC or DRRR.

under 49 C.F.R. § 1150.31 from 49 U.S.C. § 10901 to operate 17.4 miles of rail lines in Morris County, N.J.

The earliest this transaction can be consummated is July 2, 2017, the effective date of the exemption (30 days after the verified notice was filed).²

Burenga represents that: (1) the rail lines to be operated by DRRR do not connect with any other railroads that Burenga may be deemed to control; (2) the control of DRRR is not part of a series of anticipated transactions that would connect the lines to be operated by DRRR with the rail lines of any carrier that Burenga may be deemed to control; and (3) the transaction does not involve a Class I rail carrier. Therefore, the transaction is exempt from the prior approval requirements of 49 U.S.C. § 11323. See 49 C.F.R. § 1180.2(d)(2).

Under 49 U.S.C. § 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Section 11326(c), however, does not provide for labor protection for transactions under §§ 11324 and 11325 that involve only Class III rail carriers. Accordingly, the Board may not impose labor protective conditions here because all of the carriers involved are Class III carriers.

If the notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. § 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the

² On June 5, 2017, DRRR and Burenga jointly requested that the effective date of the exemption be advanced one day, to July 1, 2017. This request will be addressed in a separate decision.

effectiveness of the exemption. Stay petitions must be filed no later than June 23, 2017 (at least seven days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to Docket No. FD 36125, must be filed with the Surface Transportation Board, 395 E Street, S.W., Washington, DC 20423-0001. In addition, one copy of each pleading must be served on Eric M. Hocky, Clark Hill, PLC, One Commerce Square, 2005 Market Street, Suite 1000, Philadelphia, PA 19103.

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Decided: June 13, 2017.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.